130

(4)



No. 08-1118

IN THE

# Supreme Court of the United States

PATRICIA KONARSKI, ET AL.,

*Petitioners,*

-vs-

CITY OF TUCSON, ET AL.,

*Respondents.*

~~~

FRANK KONARSKI, ET AL.,

*Petitioners,*

-vs-

MARY JEAN RACITI, ET AL.,

*Respondents.*

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

## PETITION FOR REHEARING

Frank J. Konarski
Gabriela Konarski
Patricia Konarski
John F. Konarski
Frank E. Konarski
*Pro Se*
450 West Dakota St.
Tucson, Arizona 85706
Phone: 520-746-0564
~~~

Herbert J. Malveaux, Esq.
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

Johnny Barnes, Esq., Director of ACLU-NCA
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

Christian J. Camenisch, Esq.
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

Phillip J. Collins, Esq.
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

Isaac Kunnirickal, Esq.
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

Mark F. Willimann, Esq.
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

Andrew Diodati, Esq.
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

William S. Bach, Esq.
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

Montague E. Davis, Esq.
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

Christopher L. Enos, Esq.
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

Keith Knowlton, Esq.
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

Mark Hall, Esq.
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

Marc Victor, Esq.
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

Richard Grossack, Esq.
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

David Grossack, Esq.
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

John Amabile, Esq.
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

Thomas S. Hartzell, Esq.
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

William G. Walker, Esq.
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

Hugh Cawthorne, Esq.
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

Richard C. Henry, Esq.
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

Roger Taylor, Esq.
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

Lynn E. Goar, Esq.
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

James (Jim) Alder, Esq.
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

Vernon Peltz, Esq.
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

Peter Nielsen, Esq.
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

David Lipartito, Esq.
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

Thomas Bayham, Esq.
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

Mark Resnick, Esq.
*Of Counsel/Advisor/Associate/Friend/*
*One Way or Another Involved In or Aware of the Case*

Herbert Beigel, Esq.
*Of Counsel/Advisor/Associate/Friend/*
*One Way or Another Involved In or Aware of the Case*

Harriette Levitt, Esq.
*Of Counsel/Advisor/Associate/Friend/*
*One Way or Another Involved In or Aware of the Case*

Ivan Abrams, Esq.
*Of Counsel/Advisor/Associate/Friend/*
*One Way or Another Involved In or Aware of the Case*

Malcom Ryder, Esq.
*Of Counsel/Advisor/Associate/Friend/*
*One Way or Another Involved In or Aware of the Case*

Stephanie Meade, Esq.
*Of Counsel/Advisor/Associate/Friend/*
*One Way or Another Involved In or Aware of the Case*

Sidney Wolitzky, Esq.
*Of Counsel/Advisor/Associate/Friend/*
*One Way or Another Involved In or Aware of the Case*

Peter G. Schmerl, Esq.
*Of Counsel/Advisor/Associate/Friend/*
*One Way or Another Involved In or Aware of the Case*

Robert Hooker, Esq.
*One Way or Another Involved In or Aware of the Case*
*He took our money and deceived us, and passed away.*

*Others and we strongly believe that some individuals of the City of Tucson, through their bad influence—discrimination, prejudice, hate crimes, frames, extortion, etc.—caused some of the attorneys listed above to take our money and deceive us. That's why we are appealing to the Supreme Court.*

## TABLE OF CONTENTS

**Pages**

## TABLE OF AUTHORITIES

**Pages**

**Cases**

## TABLE OF AUTHORITIES (Continued)

**Pages**

**Cases**



**Code of Federal Regulations**

## PETITION FOR REHEARING

On May 18, 2009, this Court denied Petitioners' petition for writ of certiorari.

Per Rule 44.2, Petitioners respectfully petition this Court for rehearing of the matters of 1) the Section 8 Case, *Patricia Konarski, et al., v. City of Tucson*, and 2) the Public Corruption Whistleblower Case, *Frank Konarski, et al., v. Mary Raciti, et al.*

### Section 8 Case: Substantial Grounds for Rehearing

The Section 8 Case concerns an ever-increasingly national dilemma that, without this Court's intervention, will continue to progressively cause multi-faceted adverse effects upon society: As it is, the "growing shortage of affordable housing"[1,2] makes it extremely difficult to meet the increasing housing demands of low-income Section 8 tenants, who—with federal Section 8 Housing vouchers in hand—are consequently often left "unserved"[3] without adequate housing, and such a dilemma is further compounded by Respondents, federally-paid

---

[1] Eric Sagara, *Cost of Roof Overhead Going Through the....-City, Agencies Seek Affordable Housing Options*, TUCSON CITIZEN, Sept. 15, 2006, at 1A (quoting City Respondent Emily Nottingham).

[2] *See also* NATIONAL LOW INCOME HOUSING COALITION. 2009. *Out of Reach 2007-2008: Persistent Problems, New Challenges for Renters.*

[3] Jessica Garrison, *A Struggle to Get Housing in Order—The L.A. Agency's Chief Has Discovered Millions of Dollars Unaccounted for and Thousands of Residents Unserved*, LOS ANGELES TIMES, Oct. 21, 2007, http://articles.latimes.com/2007/oct/21/local/me-housing21.

Section 8 administrators, who have hampered—defied the Code of Federal Regulations (alternatively, "C.F.R.s" or "C.F.R.") intended to provide a framework for the federal Section 8 Housing program that provides a private solution to the dilemma in the form of encouraging privately developed affordable housing developments to alleviate such serious affordable housing deficiencies.

Given the current national economic crisis, in fact, since the filing of their briefs with this Court, Petitioners Patricia, John F. and Frank E. Konarski have received an elevated influx of Section 8 recipient move-in requests from local families to families moving from across the country who are in need of affordable housing and have made clear their desire to use their "free-choice" Section 8 Housing federal vouchers at the three petitioners' apartments.

However, in violation of the Section 8 Housing federal program considerations promulgated in the Code of Federal Regulations, particularly 24 C.F.R. 24.600, et seq., including 24 C.F.R. 24.760, Respondents have indefinitely suspended the three petitioners for more than 18 months without cause since 2003 when they first became apartment property owners from fulfilling these free-choice move-in housing requests of federal voucher holders by Respondents' refusing to perform their federally-paid function of conducting move-in housing inspections of the three petitioners' apartments, all *without* providing to Petitioners any sort of a C.F.R.-required hearing.

24 C.F.R. 24.760 requires a hearing to be held, among other procedural processes to take place, for a property owner who is suspended for more than 18 months from the program. As such, courts of

different circuits across the nation have determined that with such federal regulations come due process protections; however, the Ninth Circuit has disagreed in the Section 8 Case.

Specifically, after oral argument on August 13, 2008, the Ninth Circuit affirmed the dismissal of the Section 8 Case of Petitioners Patricia, John F. and Frank E. Konarski by relying on a legal ruling of another case—i.e., there is no independent right to participate in the Section 8 Housing program—as a basis upon which to then erroneously determine, in contravention of the jurisprudence of other circuit courts across the nation, that the Code of Federal Regulations, including particularly 24 C.F.R. 24.610, et seq., does not afford such three Petitioners or others similarly seeking participation in a federally regulated program any due process protections, including a suspension-cause hearing, to wit: "[Petitioners Patricia, John F. and Frank E. Konarski] assert[ed] that they could only be suspended from Section 8 program for 18 months **is dependent upon their having a right to participate in the program....**" Pet. for Cert. App. 4. (Emphasis added.)

Petitioners Patricia, John F. and Frank E. Konarski have argued—with authority from other circuit courts—that whether they have a "right" to Section 8 or not does not have any relevance as to whether the Code of Federal Regulations applies to them.

This Court must reverse the Ninth Circuit's opinion in order to preserve the means to have the Section 8 Housing program function as intended by the United States Congress so that deviant federally-paid administrators of the Section 8 Housing

program, who operate contrary to established federal regulations, can be held accountable for their actions by citizens such as Petitioners Patricia, John F. and Frank E. Konarski.

This Court's action to vacate the aforesaid Ninth Circuit's circuit-dividing opinion is critically necessary especially at a time when officials of the National Multi-Housing Council and National Apartment Association recently testified before the United States Congress about the affordable housing shortage crisis, underscoring that there is no room for Section 8 Housing Administrators, like Respondents, to deviate from the C.F.R.s in light of the fact that the Section 8 Housing program is the "federal government's primary involvement in the provision of affordable housing," only second to a federal tax relief program, and that "[r]ental housing has to become a higher priority if we are going to solve the affordable housing shortage," testified a housing official.[4] Though, this shortage cannot be solved if the Section 8 Housing program remains "troubled," especially as the full legal interpretation and effect of its regulatory framework remains unsettled among the Ninth Circuit and other circuits as to whether citizens can apply such federal regulations afforded them to hold federally-paid Section 8 administrators, such as Respondents, accountable to the free-choice housing federal mission and the legitimate administration of such a

---

[4] Jim Arbury, Senior Vice President, Government Affairs National Multi Housing Council / National Apartment Association, Statement and Testimony Before U.S. Congress, Committee on House Financial Services, CQ CONGRESSIONAL TESTIMONY, CONGRESSIONAL QUARTERLY, INC., 2009.

program.[5]

Clearly, the Ninth Circuit's opinion of one's needing a *prerequisite* right to apply the Code of Federal Regulations is in conflict with various other appeals courts of different circuits. In fact, contrary to the Ninth Circuit's opinion, the Fifth Circuit has actually applied 24 C.F.R. 24.700 to the "due process" found within the Code of Federal Regulations to property owners the government sought to suspend. *See Rogers v. United States,* 187 F. Supp.2d 626, 632 (N.D. Miss. 2001); affirmed by this Court in *Rogers v. United States/Human Urban Dev.*, 58 Fed. Appx. 595 (US 2003) (without published opinion).

In addition to the Fifth Circuit conflict, the Sixth Circuit found, in *Buckeye Terminix Co. v. U.S. Dep't of Housing & Urban Dev.*, 900 F.2d 259 *2 (6th Cir. 1990), that a business that did not have a contract with the U.S. Department of Housing and Urban Development or its public housing authorities, but *merely* an "interest in" being qualified for participation in a federal housing program, was legally afforded "a right to be represented by counsel and present all relevant evidence at a hearing" under the 24 C.F.R. 24.700, et seq. Yet, in the case of Petitioners Patricia, John F. and Frank E. Konarski, *sub judice*—in which not only do Petitioners have a business interest in participating in the Section 8 Housing program, they also have been engaged with numerous Section 8 voucher holders who have inundated the three petitioners with transaction

---

[5] Section 8 Program Description (Respondents federally paid; free-choice tenant housing) is located on the HUD site at http://www.hud.gov/progdesc/voucher.cfm (free-choice housing by Section 8 tenant).

forms in order to use their federal vouchers at the three petitioners' apartments, consequently making the three petitioners' privilege to participate in the program a right to accept the business they receive—they have been denied all due process protections accorded under 24 C.F.R. 24.700, et seq., including a hearing, to the present day—now approximately seven years, even though "a **prompt** post-deprivation hearing" should have been accorded them at the very least. *Buckeye*, 900 F.2d 259 *13 (Emphasis added.) *See also Housing Study Group v. Kemp*, 739 F. Supp. 633 (D.C. May 16, 1990) (citing *Buckeye, supra*). *See also Sims v. Kemp,* 781 F. Supp. 1264 (N.D. Ill. July 11, 1991) (citing C.F.R.s, including 24 C.F.R. 24.700, et seq., apply to the limited denial, suspension and debarment actions by a housing authority).

This is where the injustice lies: If Section 8 participation is determined by the Section 8 voucher holder, and Respondents' role is to ensure safe and sanitary living conditions to those qualified under the Section 8 Housing program by performing their federally-paid function of processing Section 8 voucher holders' move-in requests at the three petitioners' apartments, where is the government's—in this case Respondents'—authority to suspend the application of the Code of Federal Regulations as it pertains to any property owner in Southern Arizona or any other locality? Quite bluntly, this authority does not exist.

Put differently, since the Section 8 voucher recipient determines where they live—what housing of a property owner they want, the Respondents' job is to administer this program by: (1) ensuring that the property is safe and secure by performing move-

in inspections; and (2) making sure that the property owner gets compensated. Instead, Respondents' refusal to conduct these inspections has ended the "free-choice" in the federal free-choice Section 8 Housing program, as prospective Section 8 tenants have been *steered away* from their free choice of housing by Respondents—in defiance of "allowing families to choose privately owned rental housing."[6] Effectively, Respondents have violated the core mission of the federal housing program and interfered with interstate commerce in the process,[7] putting a further strain on low-income housing families by prohibitively restricting their choice of housing—housing of which is already too scarce to begin with, all in defiance of the C.F.R.s and without cause. Furthermore, in failing to follow these federal regulations, particularly 24 C.F.R. 24.700, et seq., Respondents have orchestrated—and the Ninth Circuit's circuit-defying opinion, as it stands, has allowed to persist—an unorthodox "end-run around the clear intent of Congress"—the intent of free-choice housing. *Sims*, 781 F. Supp. 1264, 1268 (N.D. Ill. July 11, 1991).

If the Code of Federal Regulations were to only be applied to property owners who have a "right" to Section 8, and in consideration of the Ninth Circuits' establishment that no property owner actually has the "right" to Section 8, then, logically, the Code would protect no property holder, rendering such a

---

[6] Section 8 Program Description (Respondents federally paid; free-choice tenant housing) is located on the HUD site at http://www.hud.gov/progdesc/voucher.cfm.

[7] *U.S. v. Gomez*, 87 F.3d 1093, 1094 (9th Cir. 1996) ("rental property is unquestionably...affecting interstate commerce.")

code impotent as to its regulatory purpose and useless as to its existence.

Therefore, the Ninth Circuit's opinion defies the jurisprudence of other circuit courts, the Congress's free-choice housing intent, and also logic.

Clearly, 24 C.F.R. 24.700, et seq., does apply to Petitioners Patricia, John F. and Frank E. Konarski, and they are owed procedural due process, including a hearing, so that the three petitioners may fulfill Section 8 Housing recipients' choice of using their housing vouchers at the three petitioners' apartments without being met by highly inappropriate *steer* tactics from Respondents, and so that the federal Section 8 Housing program overall can be administered legitimately in order to alleviate the affordable housing shortage.

## Public Corruption Whistleblower Case: Substantial Grounds for Rehearing

The Whistleblower Case involves the revelation of an extraordinary *clandestine* public corruption scheme: City of Tucson employees employed as of 2002 and on came forward in 2005 to admit, as whistleblowers, that they were ordered by high-directorate Respondents to harm Petitioners Frank J., Gabriela, Patricia, John F. and Frank E. Konarski and their business through a systematic and methodical public corruption campaign to run them out of business. This includes the following: falsifying police reports and charges in 2002 and the subsequent extortion of money; pursuing frivolous and vexatious requirements of Petitioners to progressively hinder the management and commerce of their business; attempting to deprive Petitioners'

use of their property; and utilizing inspectors of the Department of Neighborhood Resources to hinder Petitioners' profession and systematically rob them of their real estate and livelihood. The Ninth Circuit's Opinion is devoid of the foregoing description of the nature of this egregious public corruption matter.

Respondents had the District Court dismiss the Whistleblower Case on *res judicata*, which the Ninth Circuit upheld after oral arguments, despite the maintained fact that the Whistleblower Case did not meet the *res judicata* criteria.

The crux of the appeal issue before this Court is that even if, *assuming arguendo,* the rigid form of *res judicata* did, in fact, bar the Whistleblower Case, as the District Court and Ninth Circuit believed it did, it was not proper for the Ninth Circuit to have affirmed such a dismissal of the Whistleblower Case instead of allowing it to be remanded to meet the justice-wielding body of a jury because said case arose out of noteworthy egregious injustices Petitioners have suffered as a result of a whistleblower-revealed extraordinarily methodical and systematic public corruption scheme aimed at destroying a family and their business that should be considered as part of what is today's "certain instances that are deemed sufficiently gross to demand a departure from rigid adherence to the doctrine of *res judicata.*" Petitioners' Response to Respondents' motion to dismiss, at pages 12-13, filed on December 8, 2006, citing, inter alia, *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 244 (1944).[8] *See also Charter Twp. of Muskegon v. City of*

---

[8] *United States v. Beggerly*, 524 U.S. 38, 46 (1998) internally

*Muskegon*, 303 F.3d 755, 762 (6th Cir. 2002).

Whistleblowers reveal that the corruption operations targeting Petitioners were ***"top secret,"*** done ***"behind closed door sessions"*** where Respondents—with the use of unlimited public funds and resources—falsified documents, etc., in attempting to ***"put them [Petitioners] out of business."*** Court Reporter Transcript of Whistleblower Robert and Brian Hendricks, May 9, 2005, at 20, line 11; at 11, lines 4-8; at 3, lines 17-18, respectively.[9] (Emphasis added.) This is a prime injustice example requiring a "departure from rigid adherence to the doctrine of *res judicata*." *United States v. Beggerly*, 524 U.S. 38, 46 (1998).

There is scant privity of parties,[10] and given the *surreptitious* efforts of corrupt Respondents that caused information to be withheld from Petitioners and the court until the whistleblower revelations in 2005, the elements of *res judicata* should *not* have been so *rigidly* applied.

The Ninth Circuit's Opinion is at odds in affirming the District Court's ruling of *res judicata* in the Whistleblower Case: Empirically, it is not legally possible for the District Court nor Ninth Circuit to consider a 1998 cause of action of a no-probable-cause "police brutality," and a 2002 cause of action for fabricating bogus charges and other tortious conduct as one in the same for the purpose of *res*

---

cites *Hazel* as the original source of the latter quote.

[9] Petition for Writ of Certiorari at 20-21 includes whistleblower revelations of Respondents' use of a court to effect fraud: the fabrication—trumping up of criminal charges to extort money from Petitioners in 2003.

[10] For more information on scant privity, see Petition for Writ of Certiorari at 14.

*judicata*; it simply cannot be reconciled that the two are the same action under the same litigation.

Instead of distinguishing the Whistleblower Case apart from the incident just prior to 1998, the Ninth Circuit incorrectly implies that it is based "as a result of the incident." Pet. for Cert. App. 2. The Ninth Circuit's Opinion mistakenly goes out further on a limb to make an all-inclusive disposition that while the claims of the Whistleblower Case "are not directly controlled by the prior judgment holding that they have no right to participate in the Section 8 program, the claims are barred because they could have been raised in the prior action." *Id.* at 4. Petitioners retort: How could the Whistleblower Case claims be raised in the prior action of 1998 or 2001 if the Whistleblower Case is based on misconduct discovered in 2005 based on a cause of action alleged in 2002, more than four years later than the 1998 action and a year later than the 2001 action? Reading the foregoing excerpts of the Opinion makes one realize that the Ninth Circuit erroneously did not appreciate the critical knowledge of what the Whistleblower Case actually entails because nowhere in the 4-page Opinion does the Ninth Circuit refer to the post-2001 misconduct.

It is in the light that this Court should consider the Whistleblower Case as one of today's instances in which justice requires that the Court "depart[ ]" from the "rigid adherence to the doctrine of *res judicata*" so that the case can moved forward. *United States v. Beggerly*,524 U.S. 38, 46 (1998) (*citing Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 244 (1944)). The District Court and Ninth Circuit failed to provide such relief.

The damning transcribed admissions of the

whistleblowers' egregious systematic and methodical orders made by high-directorate Respondents to attack Petitioners (Konarskis) and their business that make up the claims of the Whistleblower Case provide an alarming glimpse of the public corruption Petitioners had to endure, including the following:

Whistleblower: They [city officials] have had logistical meetings to specifically go after who they want. (Court Reporter Transcript of Whistleblower Lee Ray Hanley, April 6, 2005, at 27, lines 11-12; available in court records or upon request to Petitioners.)

Whistleblower: What they wanted to do was put them (Konarski) out of business. (Court Reporter Transcript of Whistleblower Robert and Brian Hendricks, May 9, 2005, at 3, lines 17-18; available in court records or upon request to Petitioners.)

Whistleblower: These people [city officials] are bad.... I do know he [city official] tried to condemn some property that your dad [Frank J. Konarski] now owns....And his idea was that he was going to take the property. (Court Reporter Transcript of Whistleblower Lee Ray Hanley, April 6, 2005, at 7, line 1, lines 12-14, lines 18-19; available in court records or upon

request to Petitioners.)

Whistleblower: I used to work for Ceci Cruz and Rick Saldate [city officials], and they would send us out there on occasion to harass them [Konarskis]. (Court Reporter Transcript of Whistleblowers Robert and Brian Hendricks, May 9, 2005, at 3, lines 10-12; available in court records or upon request to Petitioners.)

Whistleblower: Rick Saldate and Cecilia Cruz [city officials] are aware that what they're asking for is illegal, but they're also aware that most people won't fight. They go after the poor people first. (Court Reporter Transcript of Whistleblower Lee Ray Hanley, April 6, 2005, at 12, lines 21-24; available in court records or upon request to Petitioners.)

Whistleblower: The Konarskis was one of their main targets. (Court Reporter Transcript of Whistleblowers Robert and Brian Hendricks, May 9, 2005, at 4, lines 6-7; available in court records or upon request to Petitioners.)

Whistleblower: They just had a personal vendetta against them [Konarski], it seemed to me.

/..../
I know that Rick and his father [city officials] own a lot of rental properties, maybe they were trying to get it...I just know they had a personal vendetta against the Konarskis. (Court Reporter Transcript of Whistleblowers Robert and Brian Hendricks, May 9, 2005, at 6, lines 1-2 and lines 8-11; available in court records or upon request to Petitioners.)

Whistleblower: They [city officials] were forcing me to do things I didn't want. (Court Reporter Transcript of Whistleblowers Robert and Brian Hendricks, May 9, 2005, at 14, lines 23-24; available in court records or upon request to Petitioners.)

Interviewer: Okay. Did he [Frank J. Konarski] ever touch you?

Whistleblower: No, he never touched me....
/..../

Whistleblower: I didn't want to pursue any charges, and they chased me down for a good two weeks. 'You've got to do this. You've got to do this....
....She [Cecilia Cruz, city official] pushed the hell out of that shit. She even escorted me to the City

Attorney's Office. She helped me – she didn't help me – she prepared everything.

/..../

'This is what you've got to tie in. This is what we want to do.' Blah, blah, blah. I felt bad. Then one day, I'm getting a phone call that says, 'Jess, will you drop these charges? We're going to give you 500 bucks.' If I can make this guy go away, and get rid of Ceci, I'll take 50 dollars, I told him. (Court Reporter Transcript of Whistleblower Jess Craig, April 19, 2005, at 13, lines 5-7; at 16, lines 10-12, 20-23; at 17, lines 1-6; available in court records or upon request to Petitioners.)

Whistleblower: They [city officials] would go into the computer and they would change—they would change stuff inside the computer.

/..../

...[T]hey would go in there and change our stuff to make it—to benefit their fitting. (Court Reporter Transcript of Whistleblowers Robert and Brian Hendricks, May 9, 2005, at 20, lines 9-11 and 17-18; available in court records or upon request to Petitioners.)

Interviewer: Were the Konarskis one of those people on that list?

Whistleblower: The Konarskis were one of those people. I was also told by one of the inspectors that they sat outside one of Mr. Konarski's properties yelling at the person inside that he was a wimp, or a pussy, and that he needed to get out there....(Court Reporter Transcript ofWhistleblower Lee Ray Hanley, April 14, 2005, at 15, lines 12-18; available in court records or upon request to Petitioners.)

Whistleblower: They [city officials] wanted to hit Frank harder. Harder. (Court Reporter Transcript of Whistleblower Jess Craig, April 19, 2005, at 6, lines 20-21; available in court records or upon request to Petitioners.)

Whistleblower: You have to write up things, contort, twist. (Court Reporter Transcript of Whistleblower Jess Craig,April 19,2005,at 9, line10; available in court records or upon request to Petitioners.)

Whistleblower: I've been telling the [City] lawyers for years. I've been going, you guys are going to get

> screwed one of these days because what you're doing is not legal. (Court Reporter Transcript of Whistleblower Lee Ray Hanley, April 6, 2005, at 23, line 1, lines 12-15; available in court records or upon request to Petitioners.)

Given the above, contrary to the Opinion, "the City of Tucson's decision not to enter into...contracts" is shown as not being the basis of the Whistleblower Case, to say the least. Pet. for Cert. App. 2.

It would be "manifestly unconscionable" for the corrupt Respondents to be able to escape accountability for their gross tortious and criminal actions against Petitioners by this Court's maintaining the rigid *res-judicata* bar merely because Respondents were able to utilize government resources to conceal their corrupt activities. *Hazel-Atlas Glass Co., supra* (citing *Pickford v. Talbott*, 225 U.S. 651, 657 (1912)).

The Section 8 Case and Whistleblower Case are deserving of this Court's review, as they involve Respondents' continuing misconduct and significant questions "persist and [are] agitated by [such] continuing activities." *Carroll v. President and Commissioners of Princess Anne*, 393 U.S. 175, 179 (1968).

## CONCLUSION

Given the foregoing, it is respectfully requested that this Court grant the instant petition for rehearing and hear this matter.

Others and Petitioners believe Respondents'

Brief in Opposition prepared by City Attorneys Michael Rankin and Martha Durkin are the main leaders of the crime ring that commits extortion, corruption, hate crimes, discrimination, frames, etc. Michael Rankin and Martha Durkin, in their brief, created fabrications—pure lies to camouflage all of Respondents' and their criminal acts that they did with their own conflict of interest, including to terrorize Petitioners for years to steal their properties, businesses, and ruin their good name.

Whenever Petitioners tried to defend themselves, their attorneys were discouraged and threatened. To prove this, please see all the attorneys reflected in the introductory of the Petition and this Reply. Petitioners' attempt to hire a new attorney was met with the same discouragement and threats by City/Respondents. Proving this, Petitioners have affidavits from these attorneys.

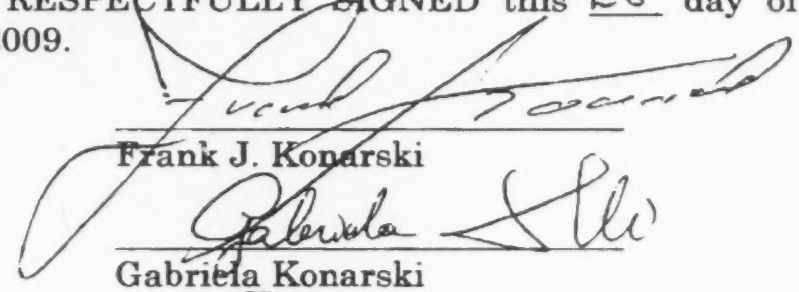
Petitioners also tried contacting the local police, local FBI, and attorney general's office, but they are silent. The local FBI, through Respondents' influences, threatened Petitioners with no reason instead of helping them, claiming they are above God.

Respondents are holding Petitioners' businesses hostage and are deliberately attempting to extort, by proxy, over $800,000.00 from Petitioners through a deliberate frame via homeless people who fraudulently-induced their tenancy at Petitioners' business and violated a crime-free addendum in disturbing Petitioners' complex community, as determined by eviction trial Judge Walter Weber, who rendered an eviction judgment in Petitioners' favor. Despite this, others and Petitioners believe City/Respondents, in retaliation to Petitioners'

exposing their corruption, are deliberately using their conflict-of-interest attorney-general friends and scam-artist attorney to extort money from Petitioners and their insurance in attempting to weaken Petitioners.

To prove these facts, see the whistleblower excerpts found here and in the Petition, which come from the transcripts prepared by a court reporter present with an attorney conducting whistleblower interviews. Immediately after these transcripts were released to Respondents/City, the court reporter was found dead; others and Petitioners believe this happened because of the public corruption whistleblower case.

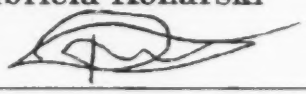
RESPECTFULLY SIGNED this 28 day of May 2009.



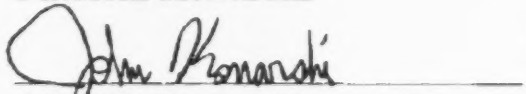
Frank J. Konarski



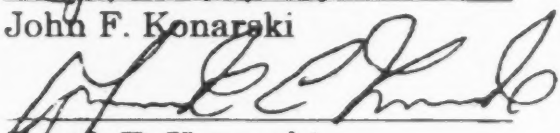
Gabriela Konarski



Patricia Konarski



John F. Konarski



Frank E. Konarski
*Pro Se*
450 West Dakota Street
Tucson, Arizona 85706
Phone: 520-746-0564

Herbert J. Malveaux, Esq.
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

Johnny Barnes, Esq., Director of ACLU-NCA
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

Christian J. Camenisch, Esq.
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

Phillip J. Collins, Esq.
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

Isaac Kunnirickal, Esq.
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

Mark F. Willimann, Esq.
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

Andrew Diodati, Esq.
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

William S. Bach, Esq.
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

Montague E. Davis, Esq.
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

Christopher L. Enos, Esq.
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

Keith Knowlton, Esq.
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

Mark Hall, Esq.
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

Marc Victor, Esq.
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

Richard Grossack, Esq.
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

David Grossack, Esq.
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

John Amabile, Esq.
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

Thomas S. Hartzell, Esq.
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

William G. Walker, Esq.
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

Hugh Cawthorne, Esq.
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

Richard C. Henry, Esq.
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

Roger Taylor, Esq.
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

Lynn E. Goar, Esq.
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

James (Jim) Alder, Esq.
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

Vernon Peltz, Esq.
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

Peter Nielsen, Esq.
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

David Lipartito, Esq.
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

Thomas Bayham, Esq.
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

Mark Resnick, Esq.
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

Herbert Beigel, Esq.
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

Harriette Levitt, Esq.
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

Malcom Ryder, Esq.
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

Ivan Abrams, Esq.
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

Stephanie Meade, Esq.
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

Sidney Wolitzky, Esq.
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

Peter G. Schmerl, Esq.
*Of Counsel / Advisor / Associate / Friend /*
*One Way or Another Involved In or Aware of the Case*

Robert Hooker, Esq.
*One Way or Another Involved In or Aware of the Case*
*He took our money and deceived us, and passed away.*

## CERTIFICATION OF GOOD FAITH

The Petitioners certify, as *pro se* individuals to the best of their abilities, that this Petition for Rehearing is brought in good faith and not interposed for the purpose of delay.

This 28 day of May 2009.

Frank J. Konarski

Gabriela Konarski

Patricia Konarski

John F. Konarski

Frank E. Konarski
*Pro Se*
450 West Dakota Street
Tucson, Arizona 85706
Phone: 520-746-0564